

ESTTA Tracking number: **ESTTA259100**

Filing date: **01/07/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|----------|
| Name | Simply Sushi, LLC | | |
| Entity | Limited Liability Company | Citizenship | New York |
| Address | 33 Curtis Avenue West Orange, NJ 07052 UNITED STATES | | |

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| Attorney information | Catherine M. Clayton Gibbons P.C. One Pennsylvania Plaza 37th Floor New York, NY 10119 UNITED STATES IPdocket@gibbonslaw.com, cclayton@gibbonslaw.com Phone:212.613.2071 |
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Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 3544714 | Registration date | 12/09/2008 |
| Registrant | Moriarty, John 2777 Northtowne Ln. #2105 Reno, NV 89512 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 043. First Use: 2008/03/01 First Use In Commerce: 2008/05/12 All goods and services in the class are cancelled, namely: Restaurant services |
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Grounds for Cancellation

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Petitioner as Basis for Cancellation

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|----------------------|--------------|-----------------------|------------|
| U.S. Application No. | 77609014 | Application Date | 11/06/2008 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | SIMPLY SUSHI | | |

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|---------------------|---|
| Design Mark | SIMPLY SUSHI |
| Description of Mark | NONE |
| Goods/Services | Class 035. First use: First Use: 2006/07/16 First Use In Commerce: 2006/07/16 Wholesale food distributorship services Class 043. First use: First Use: 2006/06/26 First Use In Commerce: 2006/06/26 Cafe and restaurant services; Catering |

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|----------------------|----------|-----------------------|------------|
| U.S. Application No. | 77609114 | Application Date | 11/06/2008 |
| Registration Date | NONE | Foreign Priority Date | NONE |

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| Word Mark | SIMPLY SUSHI |
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|-------------|---|
| Design Mark |  |
|-------------|---|

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|---------------------|---|
| Description of Mark | The mark consists of the words SIMPLY SUSHI in black letters. A red oval appears behind the "U" in "SUSHI." It has a white star and four teardrop shapes on it. |
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|----------------|---|
| Goods/Services | Class 035. First use: First Use: 2006/07/17 First Use In Commerce: 2006/07/17 Wholesale food distributorship services Class 043. First use: First Use: 2006/06/26 First Use In Commerce: 2006/06/26 Cafe and restaurant services; Catering |
|----------------|---|

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|-------------|--|
| Attachments | 77609014#TMSN.jpeg (1 page)(bytes) 77609114#TMSN.jpeg (1 page)(bytes) SimplySushiPetitionforCancellation.pdf (6 pages)(68537 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

| | |
|-----------|----------------------|
| Signature | /cmc/ |
| Name | Catherine M. Clayton |
| Date | 01/07/2009 |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,544,714
Mark: SIMPLY SUSHI for “restaurant services”

SIMPLY SUSHI, LLC,

Petitioner,

v.

JOHN MORIARTY,

Respondent.

Cancellation No.

PETITION FOR CANCELLATION

Simply Sushi, LLC (“Simply Sushi” or “Petitioner”), a New York Limited Liability Company located at 33 Curtis Avenue, West Orange, NJ 07052, believes that it is and will continue to be damaged by U.S. Registration No. 3,544,714 for the mark SIMPLY SUSHI for “restaurant services” (the “Challenged Registration”), and hereby petitions to cancel the same. To the best of Petitioner’s knowledge, the name and address of the current owner of the registration are: John Moriarty, 2777 Northtowne Lane #2105, Reno, NV 89512.

The grounds for cancellation are as follows:

1. Commencing at a time prior to Respondent’s asserted priority date in the Challenged Registration, Simply Sushi has used the trade name and trademark SIMPLY SUSHI in United States commerce in connection its café services, restaurant services, catering and wholesale food distributorship services. Photographs of signage at Petitioner’s SIMPLY SUSHI locations are annexed hereto as Exhibit A.

2. Simply Sushi is the owner of the following U.S. trademark applications based on use in United States commerce of its SIMPLY SUSHI mark:

| MARK | SER. NO. | SERVICES | PRIORITY DATE |
|-----------------------|------------|---|--|
| SIMPLY SUSHI | 77/609,014 | <u>Class 35:</u> Wholesale food distributorship services <u>Class 43:</u> Café and restaurant services; catering | <u>Class 35:</u> 7/16/06 <u>Class 43:</u> 6/26/06 |
| SIMPLY SUSHI & Design | 77/609,114 | <u>Class 35:</u> Wholesale food distributorship services <u>Class 43:</u> Café and restaurant services; catering | <u>Class 35:</u> 7/16/06 <u>Class 43:</u> 6/26/06 |

3. On November 5, 2007, more than a year after Petitioner began using its SIMPLY SUSHI mark in U.S. commerce, Respondent filed Application Ser. No. 77/321,888 based on intent to use the mark SIMPLY SUSHI for “restaurant services.” That application passed to registration on December 9, 2008 and was assigned Reg. No. 3,544,714.

4. The subject mark of the Challenged Registration is identical to Petitioner’s SIMPLY SUSHI Mark.

5. The services covered by the Challenged Registration are identical and/or substantially similar to those provided by Petitioner under its SIMPLY SUSHI mark.

6. Petitioner believes that it is and will be damaged by the continued registration of the Challenged Registration because such registration would support and assist Respondent in the confusing and misleading use of Petitioner’s SIMPLY SUSHI mark and would give color of

exclusive statutory rights in Respondent, in violation and derogation of the prior superior rights of Petitioner.

WHEREFORE, Petitioner SIMPLY SUSHI requests that the Challenged Registration be cancelled, and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

Please recognize as attorneys for Petitioner in this proceeding Catherine M. Clayton and Lucy E. Emhardt (members of the Bar of the State of New York), and the law firm of Gibbons P.C., One Pennsylvania Plaza, 37th Floor, New York, NY 10119. Kindly direct all correspondence to the attention of Catherine M. Clayton at the foregoing address.

Dated: January 7, 2009

Respectfully Submitted,

GIBBONS P.C.

A handwritten signature in black ink, appearing to read 'C.M. Clayton', with a stylized flourish at the end.

By: _____
Catherine M. Clayton, Esq.
Lucy E. Emhardt, Esq.
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Attorneys for Petitioner
Simply Sushi LLC

EXHIBIT A



